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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

GARY LEE CRITES,

Defendant and Appellant.

2d Crim. No. B290024  
(Super. Ct. No. 2014027435)  
(Ventura County)

Gary Lee Crites appeals a judgment entered following his guilty plea to possession of heroin for sale, possession of methamphetamine, and unlawful possession of a firearm, with admissions that he sold 14.25 grams of heroin, was armed with a firearm during commission of the heroin offense, and suffered a prior serious felony strike conviction. (Health & Saf. Code, §§ 11351, 11377, subd. (a), 11352.5; Pen. Code, §§ 29800, subd. (a)(1), 12022, subd. (c), 667, subds. (c) & (e), 1170.12, subds. (a) & (c).) We affirm.

This appeal concerns the search of Crites's Oak View residence and his Chevrolet truck pursuant to a search warrant.

The affidavit supporting the search warrant was sealed according to *People v. Hobbs* (1994) 7 Cal.4th 948, 971 (*Hobbs*). Following his subsequent arrest on drug and firearm charges, Crites filed motions to unseal the search warrant affidavit and suppress evidence obtained during the search. The trial court denied the motions. Crites requests that we independently review the sealed portions of the search warrant affidavit to determine whether the document was properly sealed and whether, in light of the affidavit and testimony at the suppression hearing, the search was lawful.

### *FACTUAL AND PROCEDURAL HISTORY*

#### *September 5, 2014, Surveillance and Search*

Ventura police officers suspected Crites of selling controlled substances from his Oak View residence. For that reason, in the afternoon of September 5, 2014, Commander David Dickey conducted a surveillance of Crites's residence. Dickey saw several people coming and going from the residence and, specifically, two men separately leave the residence carrying large canvas bags. The two men had entered the residence without bags.

Dickey decided to "freeze" the residence to prevent the destruction or removal of drugs or firearms. After obtaining assistance from other police officers, a freeze and protective sweep were conducted. During the sweep, Crites attempted to leave by another door, but then retreated and was apprehended.

Meanwhile, Corporal Michael Acquarelli was obtaining a search warrant to search the premises and Crites's truck. The search warrant was signed and issued approximately 90 minutes after the freeze and sweep. At Acquarelli's request, the magistrate sealed the search warrant affidavit.

During execution of the search warrant, the officers discovered heroin, marijuana, methamphetamine, ammunition, and nine firearms (handguns, shotguns, and rifles), among other items. Police officers arrested Crites and the prosecutor later charged him with 12 counts of drug and firearm offenses, in addition to drug quantity, arming, and prior serious felony strike allegations.

*Motions to Unseal Affidavit and Suppress Evidence*

Crites requested that the search warrant affidavit be unsealed to allow effective motions attacking the issuance of the warrant and probable cause to search. The trial court then held an in camera hearing pursuant to *Hobbs* and Evidence Code sections 915 and 1041. Following the court's review of the warrant and affidavit, it ruled that the affidavit did not disclose exculpatory information, there were no material misstatements or omissions in the affidavit, and redaction of the affidavit could not be accomplished. The court then denied Crites's *Hobbs* motion.

Crites later filed a motion to suppress evidence pursuant to Penal Code section 1538.5. Crites contended that police officers acted unreasonably by freezing his residence based upon Dickey's initial observations.

During the suppression hearing, Acquarelli and Dickey testified in open court. Acquarelli stated that he was writing the affidavit at the time that Dickey decided to freeze Crites's residence. Acquarelli also testified that he did not receive information of any contraband in the residence that may have been seen by the officers conducting the protective sweep.

The trial court reviewed the sealed search warrant affidavit and concluded that the observations of Dickey ("individuals

leaving with bags") established probable cause to freeze Crites's residence for issuance of the warrant.

Following the denial of his motions, Crites pleaded guilty to possession of heroin for sale, possession of methamphetamine, and unlawful possession of a firearm. He also admitted that he sold 14.25 grams of heroin, was armed with a firearm during commission of the heroin offense, and suffered a prior serious felony strike conviction. (Health & Saf. Code, §§ 11351, 11377, subd. (a), 11352.5; Pen. Code, §§ 29800, subd. (a)(1), 12022, subd. (c), 667, subds. (c) & (e), 1170.12, subds. (a) & (c).) The trial court then struck the prior serious felony conviction in the interest of justice. (Pen. Code, § 1385.) According to a plea agreement, the court thereafter sentenced Crites to a seven-year prison term, imposed various fines and fees, and awarded 16 days of presentence custody credit. On the prosecutor's motion, the court dismissed all remaining counts and allegations.

Crites appeals and challenges the nondisclosure of the search warrant affidavit and the denial of his suppression motion. (Pen. Code, § 1538.5, subd. (m); *People v. Collins* (2004) 115 Cal.App.4th 137, 149 [following guilty plea, appellant may seek review of denial of disclosure of informant to the extent motion is directed to legality of search].)

### *DISCUSSION*

The prosecutor may exercise his privilege not to disclose the identity of a confidential informant if "the necessity for preserving the confidentiality of his or her identity outweighs the necessity for disclosure in the interest of justice." (Evid. Code, § 1041, subd. (a)(2).) "[A]ll or any part of a search warrant affidavit may be sealed if necessary to implement the privilege and protect the identity of a confidential informant." (*People v.*

*Hobbs, supra*, 7 Cal.4th 948, 971; see Evid. Code, § 1042, subd. (b) [Where a search is made pursuant to a valid warrant, the prosecutor is "not required to reveal to the defendant . . . the identity of an informer in order to establish the legality of the search or the admissibility of any evidence obtained as a result of it"].)

When a defendant seeks to quash or traverse a warrant where a portion of the supporting affidavit has been sealed, the relevant materials are subject to an in camera review by the trial court. (*People v. Galland* (2008) 45 Cal.4th 354, 364; *People v. Hobbs, supra*, 7 Cal.4th 948, 963; see Evid. Code, § 915, subd. (b) [providing for in camera review of confidential information].) "The court should determine first whether there are sufficient grounds for maintaining the confidentiality of the informant's identity. If so, the court should then determine whether the sealing of the affidavit (or any portion thereof) 'is necessary to avoid revealing the informant's identity.'" (*Galland*, at p. 364.) Once the court determines that the affidavit was properly sealed, it should determine whether pursuant to the totality of the circumstances presented in the affidavit and any oral testimony there was a fair probability that contraband or evidence of a crime would be found in the place searched. (*Ibid.*) We independently review the record and sealed affidavit to determine whether there was a reasonable probability that a defendant could prevail on his motion to traverse or quash the warrant. (*Hobbs*, at p. 977.)

We have reviewed the entire record, including the sealed search warrant affidavit presented to the trial court and the oral transcript of the *Hobbs* in camera hearing. We conclude that the court did not err by refusing to unseal the sealed portion of the

supporting affidavit. (*People v. Hobbs, supra*, 7 Cal.4th 948, 971, 976; *People v. Camel* (2017) 8 Cal.App.5th 989, 1009 [trial court did not err in refusing to unseal entire search warrant affidavit or in determining which portions had to remain under seal to protect confidentiality of confidential informant].) The information presented in the affidavit also supports the magistrate's finding of probable cause to issue the search warrant.

The sealed affidavit and Dickey's observations also provide probable cause for the freeze and protective sweep of Crites's residence. The "need 'to prevent the imminent destruction of evidence' has long been recognized as a sufficient justification for a warrantless search" of a residence. (*Kentucky v. King* (2011) 563 U.S. 452, 460 [179 L.Ed.2d 865, 875] [statement of exigent circumstances rule].) Moreover, if exigent circumstances justify a warrantless entry, police officers may "secure" or "sweep" the entire premises to prevent destruction of evidence. (*People v. Seaton* (2001) 26 Cal.4th 598, 632 [police officers made cursory sweep of home after which they obtained a warrant prior to conducting a thorough search].)

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Bruce A. Young, Judge  
Superior Court County of Ventura

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Linda L. Currey, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief  
Assistant Attorney General, Lance E. Winters, Assistant  
Attorney General, Paul M. Roadarmel, Jr. and Allison H. Chung,  
Deputy Attorneys General, for Plaintiff and Respondent.